IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

RSA.No. 635 of 2007()

AS.118/2002 of ADDL.DISTRICT COURT-I,MAVELIKKARA
OS.28/1999 of MUNSIFF COURT,HARIPAD

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APPELLANTS : APPELLANTS/DEFENDANTS:

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1. VIJAYAN PILLAI, S/O.DIVAKARAN PILLAI,
   HOUSE NO.24, WARD NO.6, KARTHIKAPPALLY PANCHAYAT,
   MINAPPELLIL FROM MINAPPALLIL THARAVADU VEETTIL,
   MAHADEVIKADU MURI, KARTHIKAPPALLY VILLAGE.

2. RADHAMMA, AGED 26 YEARS,
   W/O.VIJAYAN PILLAI OF DO DO.

3. PONNAMMA, D/O.KUTTIYAMMA,
   MOTHER OF VIJAYAN PILLAI, OF DO DO.

4. VIDHYA, (MINOR), D/O.VIJAYAN PILLAI,
   OF DO DO.

5. DIVYA, MINOR, D/O.VIJAYAN PILLAI OF
   DO DO.

BY ADV. SRI.S.KRISHNAMOORTHY

RESPONDENTS: RESPONDENT/PLAINTIFF;

JANAKIYAMMA KANAKAMMA, PUTHENPURAYIL @
MUTTATHILPUTHENPURAYIL, KALLARE MURI, KALLARA
VILLAGE, VIKAM TALUK, FROM MANAPPALLIL VEETTIL,
MAHADEVIKADU MURI, KARTHIKAPPALLY VILLAGE.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 635 OF 2007

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Dated this the 20th day of July 2007

JUDGMENT

Defendants in O.S.28/1999 on the file of Munsiff Court Haripad are the appellants. Plaintiff is the respondent. Plaint schedule property is having an extent of 13 cents in survey No.405/c-1 and 5 Ares 60 cents in R.S.No.315/13 of Karthikappally Village with house bearing door No.6/24 of Karthikappally panchayat. Respondent instituted the suit seeking a decree for recovery of possession contending that plaint schedule property was obtained by her under the decree in O.S.260/1965 on the file of Munsiff Court, Haripad and delivery of possession was taken in execution of the decree and while so, second appellant the daughter of Kuttiyamma, the sister of the mother of the respondent and first appellant the son of Kuttiyamma approached respondent and sought permission to reside in the building and they were

permitted to reside therein and by such permission they are in occupation of the building from April, 1990 and respondent was not willing to continue the permission so granted and as per notice dated 5.11.1998, licence granted in their favour was terminated with effect from 31.12.1998 and therefore appellants are not entitled to continue in possession. Respondent sought a decree for recovery of possession. Appellants resisted the suit contending that building in the plaint schedule property was constructed by Gopala Pillai Sasidhara Panicker and he was the owner of the property and 13 cents of property was obtained by respondent and her mother and brother as a group as per the final decree in I.A.1949/2001 and after obtaining possession of that property Sasidhara Panicker constructed the building and he was residing therein and while so Sasidhara Panicker and his wife Rathnamma agreed to sell the property

to first appellant for a consideration of Rs.13,000/- and first appellant paid Rs.9000/- as advance and they are in possession of the property on the strength of the agreement for sale since then and respondent is not entitled to the decree sought for. It was also contended that they have been in possession of the property openly, continuously and peacefully and thereby they perfected their title by adverse possession and respondent lost the title and she is not entitled to the decree sought for. Learned Munsiff on the evidence of Pws.1 to 3, Dws. 1 and 2 and Exts.A1 to A8, B1 to B6, C1 upheld the title of respondent and found that appellants did not perfect their title by adverse possession and granted a decree for recovery of possession. Appellants challenged the decree and judgment before Additional District Court, Mavelikara in A.S.118/07. Learned Additional District Judge on reappreciation of

evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

2. Learned counsel appearing for appellants was heard.

3. The argument of the learned counsel was that the case of the respondent was that appellants were permitted to occupy the building and that permission was not proved and in such circumstance, the case of appellants that the building was constructed by Sasidhara Panicker and was agreed to be sold to the appellants by Panicker and put them in possession of the property pursuant to the agreement for sale should have been upheld by the courts below and in any event as the property has been in the possession of Sasidhara Panicker and thereafter with appellants, courts below should have found that respondent has lost title by adverse possession and hence should not have

granted the decree sought for.

4. On hearing learned counsel appearing for appellants and going through the judgments of the courts below, I do not find any substantial question of law involved in the appeal. The title of the respondent has not been disputed and was proved by the decree and the delivery receipt produced in the case. Even appellants did not challenge the fact that plaint schedule property was allotted to the share of the respondent in the final decree in O.S.260/1965. What was contended before the court below was that respondent is only one of the co-owners and therefore one co-owner alone is not entitled to a decree for recovery of possession. Courts below relying on the decision of this court in **Valsala v. Sundaram Nadar (1993(2) KLT 67)** held that even without the junction of other co-owners one co-owner is entitled to sue for recovery of

possession of the property. That propostion cannot be assailed.

5.Having established the title of the respondent, the only question is whether that title has been barred by adverse possession. The trial court and the first appellate court on appreciating the evidence found that title has not been barred by adverse possession. That factual finding cannot be interfered in exercise of the powers of this court under section 100 of C.P.C. When the title of the respondent has been proved and appellants did not etablish that they perfected their title or respondent lost the title by adverse possession respondent is entitled to the decree for recovery of possession granted by courts below. As no substantial question of law is involved in the appeal, appeal is dismissed in limine.

6.Learned counsel then submitted that

appellants inlcuding the minor children are residing in the house and to enable them to find out another suitable accommodation, six months time may be granted. The suit was pending from 1999 onwards. In such circumstance, appellants cannot be granted six months time. If the appellants files an affidavit, before the trial court within two weeks from today, undertaking to unconditionally surrender the building on the expiry of four months from today, appellants will be granted four months time to surrender the building.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006